2024:BHC-NAG:1370

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 3435 of 2019

Smt. Jasbir Kaur Wd/o Devendra Singh Anand
Versus
The Collector, Nagpur and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri Rohit Joshi, Advocate for the petitioner.
Shri A.J.Gohokar, AGP for the respondent nos. 1 to 3.
Shri S.P.Bhandarkar, Advocate for the respondent nos. 4 to 19.

CORAM : ANIL S. KILOR, J.
DATED : 1st FEBRUARY, 2024.

Heard.

2. The order dated 3rd April, 2017 passed by the Naib Tehsildar, Kalmeshwar, in exercising power under Section 155 of the Maharashtra Land Revenue Code, 1966 (in short hereinafter referred as ‘MLR Code, 1966’), correcting the 7/12 extract of the land in question and also giving new survey number, is under challenge in this writ petition.

3. It is the case of the petitioner that the land in question was purchased by him and though the area mentioned in the sale-deed does not match with the four

boundaries it is a settled law in case of any such discrepancies, the boundaries were prevailed over area. It is submitted that, the correction made by the Naib Tehsildar, Kalmeshwar, therefore, amounts to taking away her rights created by way of sale-deed.

4. It is submitted that the impugned order was passed without hearing the petitioner.

5. I have perused the record. From the record it is apparent on the face of the record that, there is no findings recorded by the Naib Tehsildar granting any hearing to the petitioner.

6. Shri Bhandarkar, learned counsel for the respondent nos. 4 to 19 submits that the correction cannot be said to be an adverse to the interest of the petitioner. He submits that the correction is of clerical nature which is permissible under Section 155 of MLR Code, 1966 and the area mentioned in the sale-deed has been maintained by the Naib Tehsildar. However, he failed to point out any notice was issued before passing such order.

7. In the circumstances, it is imperative to find out whether such notice was required while carrying out any correction under Section 155 of MLR Code, 1966, for which it would be beneficial to refer to Section 155 of MLR Code, 1966, which reads thus:

> 155. Correction of clerical errors
>
> The Collector may, at any time, correct or cause to be corrected any clerical errors and any errors which the parties interested admit to have been made in the record of rights or registers maintained under this Chapter or which a revenue officer may notice during the course of his inspection:
>
> **Provided that,** when any error is noticed by a Revenue Officer during the course of his inspection, no such error shall be corrected unless notice has been given to the parties and objections, if any, have been disposed of finally in accordance with the procedure relating to disputed entries.

8. From the language of Section 155 of MLR Code, 1966, it is evident that hearing is necessary in such matter.

9. In the circumstances, only option was left with this Court to remand the matter back to the Naib Tehsildar to decide it afresh. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

ii. The order dated 3rd April, 2017 passed by the Naib Tehsildar, Kalmeshwar is hereby quashed and set aside and the matter is remanded back to the Naib Tehsildar, Kalmeshwar to decide the same afresh after hearing both the parties.

iii. Liberty is granted to the respondent nos. 4 to 19 to move a fresh application before the Naib Tehsildar, Kalmeshwar.

iv. On filing of such application the Naib Tehsildar, Kalmeshwar shall decide the same after hearing the petitioner and respondent nos. 4 to 19.

v. All points are kept open including the point of jurisdiction.

[ANIL S. KILOR, J.]